

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN ASSEMBLY JULY 5, 2011

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AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 535

Introduced by Senator De León

(Coauthor: Senator Pavley)

(Coauthors: Assembly Members Davis and Lara)

February 17, 2011

An act to add Part 11 (commencing with Section 38850) to Division 25.5 of the Health and Safety Code, relating to climate change.

LEGISLATIVE COUNSEL'S DIGEST

SB 535, as amended, De León. California Communities Healthy Air Revitalization ~~Trust~~ Act.

The California Global Warming Solutions Act of 2006 requires the State Air Resources Board to adopt regulations to require the reporting and verification of emissions of greenhouse gases and to monitor and enforce compliance with the reporting and verification program, and requires the state board to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020. The act requires the state board to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The act authorizes the state board to include use of market-based compliance mechanisms. The act authorizes the state

board to adopt a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act, and requires the revenues collected pursuant to that fee to be deposited into the Air Pollution Control Fund and be available, upon appropriation by the Legislature, for the purposes of carrying out the act.

This bill would establish the California Communities Healthy Air Revitalization ~~Trust in the State Treasury Act~~ and would require a minimum of 10% of specified revenues ~~generated for the state each year from the act to be deposited into that trust. The moneys in the trust would be deposited in the Greenhouse Gas Reduction Fund~~ be used, upon appropriation by the Legislature, in the most impacted and disadvantaged communities, as defined, to fund programs or projects that reduce greenhouse gas emissions or mitigate direct health or environmental impacts of climate change through competitive grants, loans, or other funding mechanisms. The bill would require the ~~State Air Resources Board~~ *state board* to administer *those* moneys appropriated from the ~~trust~~ *Greenhouse Gas Reduction Fund for the purposes of this act*, establish criteria and procedures, convene a review panel, and meet other specified requirements in connection with implementation. *The bill would require the Office of Environmental Health Hazard Assessment to prepare a specified publicly available report by March 1, 2013, and update it every 3 years thereafter in consultation with the California Environmental Protection Agency, the public, and specified experts.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California embraced the challenge posed by climate change
- 4 with the passage of the California Global Warming Solutions Act
- 5 ~~in~~ of 2006, enacted as Chapter 488 of the Statutes of 2006
- 6 (Assembly Bill 32). Assembly Bill 32 recognizes the
- 7 disproportionate impacts climate change will have on
- 8 disadvantaged and low-income communities in California, which
- 9 already face disproportionate impacts from substandard air quality
- 10 in the form of higher rates of respiratory illness, hospitalizations,
- 11 and premature death.

1 (b) Assembly Bill 32 recognizes the potential vulnerability of
2 California's low-income and disadvantaged population to efforts
3 to reduce greenhouse gas emissions and requires that activities
4 taken to comply with Assembly Bill 32 do not disproportionately
5 impact those communities.

6 (c) Assembly Bill 32 recognizes the public health impacts of
7 climate change and requires that activities taken to comply with
8 Assembly Bill 32 consider the localized and cumulative impacts
9 in communities that are already adversely impacted by air pollution.

10 (d) Assembly Bill 32 requires that public and private investment
11 be directed toward the most disadvantaged communities in
12 California to provide an opportunity for small businesses, schools,
13 affordable housing associations, and other community institutions
14 to participate in and benefit from statewide efforts to reduce
15 greenhouse gas emissions.

16 (e) Assembly Bill 32 ~~does not provide~~ *neither provides* a
17 definition, however, for California's most impacted and
18 disadvantaged communities, nor direction on how the state will
19 mitigate adverse impacts from climate change in these
20 communities, nor direction on how the state will ensure these
21 communities can participate in and receive investments from
22 activities taken pursuant to Assembly Bill 32 and not experience
23 disproportionate impacts.

24 (f) Since the passage of Assembly Bill 32, the State Air
25 Resources Board and other state agencies have adopted various
26 regulatory programs to enable California to achieve Assembly Bill
27 32's greenhouse gas emissions reduction target. The people of
28 California voiced their strong support for continued implementation
29 of Assembly Bill 32 with the defeat of Proposition 23 in November
30 2010.

31 (g) It is the intent of the Legislature that this act continue
32 California's implementation of Assembly Bill 32 by directing
33 resources to the state's most impacted and disadvantaged
34 communities to ensure activities taken pursuant to that authority
35 will provide economic and health benefits to these communities
36 as originally intended.

37 (h) It is the intent of the Legislature that funds ~~collected~~
38 *deposited* pursuant to this act continue California's implementation
39 of Assembly Bill 32 by achieving additional emission reductions

1 and mitigating direct health impacts on California's most impacted
2 and disadvantaged communities.

3 SEC. 2. Part 11 (commencing with Section 38850) is added to
4 Division 25.5 of the Health and Safety Code, to read:

5
6 PART 11. CALIFORNIA COMMUNITIES HEALTHY AIR
7 REVITALIZATION-TRUST ACT
8

9 38850. This part shall be known, and may be cited, as the
10 California Communities Healthy Air Revitalization-Trust Act (Cal
11 CHART).

12 38851. As used in this part, ~~the following terms have the~~
13 ~~following meanings:~~ *"most impacted and disadvantaged*
14 *communities"* *means those clusters of census blocks, or, if data is*
15 *available, the census block level, having the highest 10 percent of*
16 *cumulative impacts in California as identified in a publicly*
17 *available report prepared by the Office of Environmental Health*
18 *Hazard Assessment and completed prior to March 1, 2013. The*
19 *report shall be updated every three years thereafter.*

20 (a) ~~"Trust" means the California Communities Healthy Air~~
21 ~~Revitalization Trust.~~

22 (b) (1) ~~"Most impacted and disadvantaged communities" means~~
23 ~~either those areas having the highest 10 percent air pollution~~
24 ~~exposure and socioeconomic vulnerability within an air basin that~~
25 ~~does not meet one or more national or state ambient air quality~~
26 ~~standards, or those areas having the highest 10 percent~~
27 ~~socioeconomic vulnerability to direct health or environmental~~
28 ~~impacts of climate change.~~

29 (2) ~~The evaluation criteria for air pollution exposure shall~~
30 ~~include, at a minimum, criteria and toxic air pollution levels,~~
31 ~~proximity to sources of air pollution, and sensitive populations.~~

32 (3) ~~The evaluation criteria for socioeconomic vulnerability shall~~
33 ~~include, to the extent feasible, multiple indicators, including, but~~
34 ~~not limited to, poverty level, percent home ownership,~~
35 ~~unemployment level, and educational attainment.~~

36 (a) *The evaluation criteria for cumulative impacts shall include,*
37 *but not be limited to, exposures, public health effects, and*
38 *environmental degradation from the combined emissions and*
39 *discharges in clusters of census blocks, or, if data is available, to*
40 *the census block level, including, but not limited to, environmental*

1 *pollution from all sources, whether single or multimedia, routinely,*
2 *accidentally, or otherwise released, taking into account sensitive*
3 *populations and socioeconomic vulnerability, to the extent data is*
4 *readily available.*

5 *(b) The evaluation criteria for air pollution exposure shall*
6 *include, at a minimum, criteria and toxic air pollution levels,*
7 *proximity to sources of air pollution, and sensitive populations.*

8 *(c) The evaluation criteria for environmental exposures shall*
9 *include, at a minimum, criteria and toxic air pollution levels,*
10 *proximity to sources of air pollution, and sensitive populations.*

11 *(d) The criteria for socioeconomic vulnerability shall include,*
12 *to the extent feasible, multiple indicators, including, but not limited*
13 *to, poverty level, percentage of homeownership, unemployment*
14 *level, and educational attainment.*

15 *(e) In producing updated reports after 2013 pursuant to*
16 *paragraph (1), the Office of Environmental Health Hazard*
17 *Assessment shall consult with the California Environmental*
18 *Protection Agency, the public, and experts in the assessment of*
19 *cumulative impacts and social vulnerability.*

20 ~~38852. (a) The California Communities Healthy Air~~
21 ~~Revitalization Trust is established in the State Treasury. Not less~~
22 ~~than 10 percent of the revenues deposited in the Air Pollution~~
23 ~~Control Greenhouse Gas Reduction Fund pursuant to this division,~~
24 ~~other than revenues collected for administrative purposes pursuant~~
25 ~~to Section 38597, Section 16428.8 of the Government Code shall~~
26 ~~be allocated to the trust. Moneys in the trust are available, upon~~
27 ~~appropriation by the Legislature, for the purposes described in this~~
28 ~~part.~~

29 ~~(b) (1) Moneys allocated to the trust for the purposes described~~
30 ~~in this part shall be used solely in the most impacted and~~
31 ~~disadvantaged communities in California.~~

32 ~~(2) Moneys allocated to the trust for the purposes described in~~
33 ~~this part shall be used to fund programs or projects that reduce~~
34 ~~greenhouse gas emissions or mitigate direct health impacts of~~
35 ~~climate change, through competitive grants, loans, or other funding~~
36 ~~mechanisms.~~

37 ~~(3) To the extent allowed by law, and consistent with paragraph~~
38 ~~(2), moneys allocated to the trust may be appropriated for green~~
39 ~~collar employment or training opportunities for the most impacted~~
40 ~~and disadvantaged communities.~~

1 ~~(4)~~

2 (3) Up to 5 percent of the moneys allocated to the trust for the
3 purposes described in this part may be used for purposes of
4 administering this part, upon appropriation by the Legislature.

5 (c) To the extent that funds allocated to the trust for the purposes
6 described in this part are provided to existing programs, those
7 funds shall be used to supplement, not supplant, those programs
8 to meet the goals of this part.

9 38853. (a) The state board shall administer moneys
10 appropriated from the trust Greenhouse Gas Reduction Fund for
11 purposes of this part and shall establish criteria and procedures
12 for the implementation of this part. The state board shall begin
13 implementation of the program created pursuant to this part within
14 90 days of finding that more than five million dollars (\$5,000,000)
15 has been deposited in the trust appropriated from the Greenhouse
16 Gas Reduction Fund for purposes of this part.

17 (b) The state board, following an open and public process, shall
18 develop and adopt a report that describes the support structure and
19 framework for the implementation of this part, the types of
20 programs and projects to be funded under this part, the selection
21 and oversight process for the programs and projects to be funded,
22 and the eligibility criteria. The report shall be made available to
23 the public on the state board's Internet Web site.

24 (c) Upon implementation of the program, and by every third
25 January 1 thereafter, the state board, in consultation with the
26 Climate Action Team, in an open process, shall develop and adopt
27 the list of the most impacted and disadvantaged communities in
28 California and triennial plans describing the specific type of
29 programs and projects to be solicited for funding during the
30 three-year period. The plans and lists shall be made public on the
31 state board's Internet Web site.

32 (d) (1) By September 1, 2015, and every three years thereafter,
33 the state board, in consultation with the Climate Action Team,
34 shall submit a report to the Legislature describing the activities
35 taken during the preceding three-year period pursuant to this part,
36 including the amount and geographic distribution of programs and
37 projects funded, a description of each program and project funded,
38 and the manner in which those programs and projects and the plan
39 adopted pursuant to subdivision (c) furthered the goals of this

1 division. The report shall be made public on the state board's
2 Internet Web site.

3 (2) A report to be submitted pursuant to this section shall be
4 submitted in compliance with Section 9795 of the Government
5 Code.

6 (e) (1) The adoption of triennial plans and identification of the
7 most impacted and disadvantaged communities pursuant to
8 subdivision (c) shall be approved or adopted with the approval of
9 no fewer than four members of the review panel described in
10 Section 38854.

11 (2) If four panel members do not approve an action as required
12 by paragraph (1), the state board shall resubmit the action, revised
13 as appropriate, to the panel for reconsideration, within 90 days of
14 the disapproval.

15 38854. (a) (1) The state board shall convene a review panel
16 to make recommendations and review the development of policies,
17 plans, and programs as they relate to this part.

18 (2) The panel shall have seven members meeting the following
19 requirements:

20 (A) Each member shall have demonstrated expertise, and a
21 minimum of seven years of working experience, in the areas of
22 air pollution, public health, energy efficiency, transportation,
23 economics, or running a small business.

24 (B) Three members shall have demonstrated knowledge and
25 experience in advancing community interests in the area of
26 environmental protection for at least seven years.

27 (3) The state board shall solicit nominations to serve on the
28 panel in an open and public process, and shall appoint panel
29 members in consultation with the Senate pro Tempore and the
30 Speaker of the Assembly. A member of the panel shall serve for
31 a three-year term and may be reappointed for no more than a
32 second three-year term. For the initial appointments pursuant to
33 this section, *the* state board shall appoint panel members for two-
34 or three-year terms to ensure staggered terms and continuity of the
35 panel.

36 (b) The panel shall convene every three months to review and
37 make recommendations pursuant to this part. The panel shall
38 review and make recommendations regarding the support structure
39 and framework for the implementation of this part, the list of the
40 most impacted and disadvantaged communities in California, the

1 eligibility criteria, and the selection of the programs and projects
2 to be funded under this part.

3 38855. (a) Except as otherwise provided in subdivision (b),
4 the state board shall only approve a program or project for funding
5 after determining, based on the available evidence, that the use of
6 moneys for that program or project is consistent with the
7 requirements for the use of moneys derived from valid regulatory
8 fees, as established by the California Supreme Court in *Sinclair*
9 *Paint Co. v. State Bd. of Equalization* (1997) 15 Cal.4th 866 and
10 reaffirmed in *California Farm Bureau Federation v. State Water*
11 *Resources Control Bd.* (2011) 51 Cal.4th 421.

12 (b) The requirements of subdivision (a) do not apply to the use
13 of penalty moneys; if those moneys are segregated from fee
14 moneys.

15 38856. Nothing in this part shall be construed as resulting in
16 any taxpayer paying a higher tax within the meaning of Section 3
17 of Article XIII A of the California Constitution.